

July 31, 2007

Ms. Marlene Dortch, FCC Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

RE: Exclusive Contracts – please include in the record for FCC 07-32, MB 07-51

Dear Ms. Dortch,

I am writing you to ask that you please accept this letter as support for keeping Exclusive Contracts (ECs) in tact for small MVSPs or, Private Cable Operators (PCOs). Over the course of the last 20 years, I have been intimately involved with the management and implementation of over 200,000 units worth of MDU agreements on behalf of Private Cable Operators. My experience has led me to conclude that abolishing the exclusive nature of service agreements would severely damage the small, cottage industry comprised of several hundred companies nationwide serving residents of multiple housing properties. In addition to my firsthand experience in negotiating these agreements on behalf of operators during my career, my firm, Paradigm Marketing Group, Inc., has also transacted over \$500mm worth of system acquisitions and more than \$50mm in fund raising for dozens of clients in the Private Cable sector. If the exclusive nature of these service agreements are extinguished, so will the ability for most of these small companies to procure financing from any financial institutions based upon the inherent risks associated with the insecurity of the investment.

The nature of the capital investment on an MDU property is substantial and requires that a significant percentage of the residents living in a property subscribe to at least one or two services being offered by any broadband provider in order to allow for an acceptable return on investment. The typical investment being made today by Private Operators exceeds \$100,000 on a traditional 200 unit property. This investment is paid back through monthly voluntary subscriptions to video, Internet and sometimes phone services. After the operator pays for the video programming, bandwidth, and other operational expenses; the net operating income (NOI) then begins to pay back the system capital. In this case, if the operator is able to achieve a 50% penetration of all units on a property, which include the unoccupied apartments, and is able to achieve \$20 per month in NOI after expenses, the payback period would approximately 50 months. As you can imagine, this

rate of return is not that compelling under an exclusive arrangement, not to mention the fact that in a non-exclusive environment the penetration will be significantly less, the marketing and operating expenses will be significantly more, and the capital investment will remain the same, leaving the operator with an inability to return any acceptable investment back to the bank. This is the principle reason why I am concerned about the FCC potentially bankrupting an entire cottage sector of hard working, honest, and earnest operators trying to provide the finest broadband services available to residents of apartment complexes and condominiums across the country.

That said, I'd like to tell you about the nature of the Service Level Standards being levied by Owners on small private operators. Every property owner entering into agreements with private operators requires that certain service standards are met with regard to the number of channels being offered, the speed of the Internet service being provided, the response time involved with service related calls, all pricing of products and services, as well as the time in which calls are answered by each operator. If any of these provisions are not met or remedied within an acceptable period of time the property owner has the right to cancel the agreement and bring in another provider of service. Needless to say, after expending \$100,000 on a system and personally guaranteeing the loan, no private operator wants or would jeopardize their investment and in some cases their own personal residences with regard to the potential loss of a contract. If the FCC abolishes the exclusive nature of these agreements, these service level standards will also not be enforceable by the owners of these properties leaving residents to deal with frustrating circumstances with large companies notorious for providing poor customer service for decades.

It has also been my personal observation that competition on services is being achieved in MDU properties nationally. The OTARD ruling has created video choice on all properties across the board with thousands of satellite subscribers electing to subscribe to those services instead of the operator contracted by the property owners. In addition, thousands of High Speed Internet subscribers receive their service by some other provider than the contracted operator by virtue of the Right of Access ruling. While the financial impact of these two provisions are adverse to some operators, they have not put them out of business primarily due to the ability to achieve acceptable penetration levels by offering superior products, services and prices to the residents of these communities. However, if we go over the line and undermine the agreements by which these small operators are able to install, upgrade, and maintain technically advanced systems, no one in the private cable sector will be able or willing to put at risk the capital or effort to provide services going forward. Therefore, the measure of eliminating exclusive agreement will actually work in reverse and cause less competition than more.

Having spent my youth in the franchise industry of the cable world working for one of the largest Multiple System Operators (MSO's) in the nation for over 10 years, I experienced firsthand what happens when one operator overbuilds another and another to serve the same community. After the capital is spent by all providers, and the marketing dollars are deployed heavily, each provider winds up with an equivalent marketshare, which in and of itself is not able to achieve an acceptable rate of return to the investors of any of the companies. This market scenario will result in the elimination of competition by virtue of one provider buying out the other until economies of scale are achieved by having enough people subscribing to the services being offered in order to achieve the desired return on the investment required. Unfortunately, a large number of providers will not be able to sustain the impact of the considerable sums of money required to go the distance, resulting in bankruptcy and by defacto, poor service performance as we have seen in other recent large bankruptcies.

In conclusion, the impact of abolishing exclusive agreements with regard to the private cable sector is a bad idea from beginning to end. It is over the top. If we truly want to promote competition between operators in the broadband space, I would suggest placing your focus on Perpetual agreements that have tied up thousands of properties nationwide for the last 4 decades. All of which are held by the franchise cable industry and are preventing smaller operators from competing for service within those communities. In addition, if the FCC is concerned about keeping a level playing field and promoting competition, I would also suggest they consider examining the tremendously unfair pricing that programmers of content like ESPN, CNN, MSNBC and other basic channels are being levied against the smaller operators across the nation. In every circumstance where a small operator is competing against a large incumbent provider, the programming delta on a standard channel lineup is approximately 3 times greater in expense for the small private operator. In my estimation, it is amazing the private cable industry has thrived for 30 years in an environment where being competitive is essential to survive, despite the Herculean obstacles placed before them.

Let's not inadvertently place yet another one of these obstacles before an already challenged sector of our society. We need to preserve the exclusive nature of the broadband agreements for Private Cable Operators, eliminate perpetual agreements to open up more available markets to them, and require programmers to price their channels equally to all providers in order to avail the residents of communities across the country of the best service at the best price provided by the best operator in each community.

Thank you for your generous consideration of this letter.

Best regards,

Don Johnson

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